vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2657 OF 1997

The New Education Institute
Nasik & Ors. ... Petitioners

V/s.

Mahejabin Ashfak Ahmed Shaikh & Ors. ... Respondents

Ms.A.R.S. Baxi for Petitioners
Mr.P.K. Dhakephlakr for Respondent No.1
Mr.R.M. Patne, AGP, for Respondent Nos.3 and 4

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 24, 2007**

ORAL JUDGMENT:

. The petitioners challenge the order passed by the School Tribunal dated 7.2.1997. The School Tribunal has allowed the appeal filed by Respondent No.1 and directed the petitioners to reinstate her in her original post with benefits of backwages.

2. Respondent No.1 was appointed temporarily as a teacher in 1991 for the academic year 1991-92 on a clock hour basis. This appointment was for a period of 10 months against a reserved category post. Thereafter, in the year 1992-93, she was appointed as a full time teacher for a temporary period of one year. Her appointment was approved by the Education Officer Respondent No.3. In the academic year 1993-94

Respondent No.1 was again appointed as an Assistant teacher. The appointment order stated that her appointment was for a period of one year. However, this appointment was against a clear permanent vacancy. By an order of 30.4.1994, the petitioners issued an order of termination to Respondent NO.1. This order stated that since the appointment of Respondent No.1 was only for the academic year 1993-94, the tenure had ended and, therefore, her services were terminated. Aggrieved by the decision of the petitioners, Respondent NO.1 filed appeal No.26 of 1994 before the School Tribunal challenging the order of termination dated 30.4.1994. Respondent No.1 contended that her appointment to the junior college as an assistant teacher or lecturer was based on her qualifications. She contended that she was appointed in a clear permanent vacancy in the year 1993-94 and, therefore, she was entitled to continue in the same post. The management i.e., the petitioners herein, filed a written statement pleading that they had taken action against respondent NO.1 only because of the communication received by them from the Education Officer on 27.4.1994. The petitioners were informed by this letter that instead of appointing Respondent No.1 to the post of the assistant teacher for the academic year 1993-94, they ought to have appointed the seniormost teacher to the post of the assistant teacher/lecturer in the junior college attached to the

school. It was also mentioned that the Education Officer had not accorded approval to the appointment of Respondent NO.1. The petitioners pleaded then that Respondent NO.1 had been appointed only for one year and, therefore, she could not claim any relief, the appointment being temporary.

3. The School Tribunal by its order dated 7.2.1997 has allowed the appeal. The School Tribunal has found that the appointment of Respondent No.1 for one year was contrary to the provisions of the MEPS Act and the Rules framed thereunder. The Tribunal has framed the issue as to whether the post held by the appellant i.e, Respondent No.1 herein was a promotional post and has answered it in the negative after referring to the MEPS Act and the schedules thereto. The Tribunal was of the view that the appointment to the posts in a junior college are not promotional posts and therefore, held that Respondent No.1 was entitled to continue in her post as a lecturer in a junior college. The Tribunal then considered the objection to the continuance of Respondent NO.1 in service on the ground that her appointment was against a reserved category post. The Tribunal has after considering the material on record has concluded that the roster which was produced by the petitioners was incorrect as the appellant had been shown on roster point 109 instead of 108. The roster

point 108 was a clear vacancy and therefore Respondent NO.1 was entitled to continue in the permanent clear vacancy. As a matter of fact the Tribunal has found that Respondent No.1 was not appointed against a post reserved for the scheduled caste candidate but against an open post.

4. The learned Advocate for the petitioner submits that the petitioners had no option but to terminate the services of Respondent No.1 as she had been appointed only for a period of one year. The learned advocate points out that it was because the Education Officer intimated the petitioners by letter dated 27.4.1994 that the approval was not granted to the appointment of Respondent No.1 that they terminated the services of Respondent No.1. Reliance is placed on the judgments of this Court in *Anna Manikrao Pethe v/s. Presiding Officer, School Tribunal, Amravati & Aurangabad Division, Amravati & Ors.*, **1997 (3) Mh.L.J. 697** to submit that the Tribunal is required to frame certain preliminary points before it proceeds to decide the appeal, even if nobody appears for the management. Reliance is also placed on the judgment of the learned Single Judge of this Court in *Nehru Jana Kalyan Bahu-Uddeshiya Shikshan Sanstha & Anr. v/s. Mohan Suryabhan Wanjari & Anr.*, **2003(1) Mh.L.J. 425** where the learned Single Judge has held that if the appointment

order of a lecturer to a junior college is only for a period of one academic year although the appointment is made in a clear vacancy, the appointment cannot be deemed to be a permanent appointment as contemplated u/s 5(2) of the Act.

5. It is submitted that the Tribunal has not framed proper issues and therefore the order needs to be set aside. Besides this, it is submitted that since the appointment was only for one year in view of the judgment in the case of *Nehru Jana Kalyan Bahu Uddeshiya Shikshan Sanstha & Anr. (supra),* the order of the Tribunal should be set aside.

6. On the other hand, the learned Counsel appearing for Respondent No.1 submits that the Tribunal in a well considered judgment has decided all issues which arose before it. He has framed all pertinent issues arising in the appeal and has answered them. The Tribunal, according to the learned Counsel, has considered the fact that the appointment, though for a period of one year, was in a clear permanent vacancy and under section 5 r/w Rule 9 of the MEPS Act, Respondent No.1 ought to have been appointed on probation for a period of two years; thereafter Respondent No.1 would have been deemed to be permanent u/s 5(2). It is also submitted that the Education Officer has merely stated in his

letter that a person who was the seniormost in the secondary school ought to have been appointed to the junior college and has, therefore, not accorded approval to the appointment of Respondent No.1. However, this by itself according to the learned Counsel would not justify the action taken by the petitioners. Approval of an appointment is only for the purposes of a salary grant and not for any other purpose.

7. The learned Counsel places reliance in the judgment of the Division Bench of this Court in **Writ Petition No.1524 of 1996** *(Chandrakant s/o. Sambhaji Shende v/s. The Deputy Director of Education, Nagpur & Ors.)* of the Nagpur Bench of this Court and *Vidya Vikas Samiti, Paratwada & Anr. v/s. Presiding Officer, School Tribunak, Amravati Division, Amravati & Anr.,* decided on 4.8.1997 where both the Division Benches have held that in view of Rule 41 a teacher who is teaching in secondary school does not get promoted only because he is posted to the junior college attached to the school. The post of the junior college lecturer is not a promotional post for an assistant teacher of a secondary school to which is attached the junior college. In these circumstances, the learned Counsel submits that there is no perversity in the order of the Tribunal which requires interference from this Court under Articles 226 and 227 of the Constitution of India.

8. The Education Officer has filed an affidavit contending that the directions issued by Respondent No.3 to the Petitioners did not include a direction to terminate the services of Respondent No.1. The affiant has averred that only approval to the appointment of Respondent No.1 was denied after 1993-94.

9. In my view, the Tribunal has committed no error by holding that Respondent No.1 is entitled to reinstatement with full backwages. The initial appointment itself of Respondent No.1 was made against a clear permanent vacancy. This is a finding of fact arrived at by the Tribunal based on the roster which was produced before it. The Tribunal has observed that the backward class cell has expressed the view that the roster point shown against Respondent No.1 ought to have been 108 and not 109. The post for the roster point 108 was for an open category candidate and, therefore, Respondent No.1 had been appointed in a clear permanent vacancy.

10. Section 5(2) expressly provides that when any person is appointed to fill a clear permanent vacancy, he shall be appointed on probation for period of two years. Thus, the management ought to have appointed Respondent No.1 for a period of two years and not

limited the appointment for a period of one year. Rule 9 is explicit as it indicates the manner in which the vacancy is to be filled. Thus, it was incumbent on the petitioners to appoint Respondent No.1 on probation for 2 years against the permanent clear vacancy.

11. The Education Officer has not directed the Petitioners to terminate the services of Respondent No.1. They have done so only because the approval was not granted to the appointment order of Respondent No.1 to the post of lecturer in the junior college. However, approval is granted by the Education Officer only for the purposes of the salary grant which is payable to an aided school. The continuation of an employer in service does not depend on the grant of approval. This has been so held in the judgment of the Full Bench in the case of *St.Ulai High School & Anr. v/s. Devendraprasad Jagannath Singh,* **2007(1) Mh.L.J. 597.** Thus, the action of the Petitioners in terminating the services of Respondent No.1 is illegal.

12. In such circumstances, there is no reason to interfere with the order of the School Tribunal. Rule discharged. No costs.